

## Response to Comments on Rule Package 6

### Wisconsin Legislative Council Rules Clearinghouse

All suggested changes were made except for the following:

- 2.b. Paragraph (h) of s. NR 201.02 (12) was changed to a new sub. (13), but the “section” reference is still appropriate because the information that may be omitted applies to the entire section not just sub. (12). The language in sub. (13) was revised to indicate what items are typically included in the public notice that may likely be omitted from the fact sheet.
- 5.a. The language identified to be edited in s. NR 200.11 (2) wasn’t made. It’s correct as written, and is in accordance in 40 CFR 124.6 (b), which EPA instructed the department to include.
- 5.h. Instead of defining what a “small group” is under s. NR 203.05 (1) (e), the expression was removed and replaced with “fewer than 5 persons”.
- 5.i. Specifying in s. NR 203.05 (2) (d) how the department will determine whether “there is significant public interest in the permit application” in deciding on whether an informational hearing is needed will not be included in the rule as suggested. It would be difficult to define what is significant and would eliminate any flexibility in making this determination. In the past, questions on whether a hearing should be held have not been a problem. A petition signed by 5 persons under s. NR 203.05 (2) (c) is a relatively easy threshold to show public interest for when a hearing must be held.
- 5.l. Clarification was requested on this sentence. None is needed. The code reference s. NR 203.015 contains the information about the exemption “without a draft permit or public review”. It’s unnecessary to repeat that here.
- 5.m. The question of “to whom is the notice provided?” ... is addressed in the following sentence in the reference to s. NR 200.11.
- 5.q. The comment was to replace phrase “in accordance with” and instead use “under”. Three changes were made. But, this change wasn’t always appropriate as it depends on the specific sentence where it’s used. The existing rule language used “in accordance with” twice at s. NR 203.02 (k) and s. NR 203.03 (1), but it wasn’t changed because it wouldn’t read right.

## Public Hearing and Written Comments Received

The public informational hearing was held as scheduled on May 1, 2014, in room 313 of the Natural Resources Building in Madison. Paul Luebke and Mike Lemcke (hearing examiner) were present during the designated time for the hearing from 10:00 a.m. until noon. No one appeared at the hearing and it was closed at noon.

Two written comments were received during the comment period that concluded May 12, 2014. Their comments and the department's response are provided below.

### Stafford Rosenbaum Attorneys:

#### 1. Revisions to the Signatory Requirement.

**Comment** - The rules should maintain a municipality's ability to authorize an individual to submit an application, as is allowed for corporate signatories, instead of the change that limits individuals that can sign on behalf of a municipality. The process for delegation also needs to be included similar to corporations.

**Response** - The department agrees and revised s. NR 205.07 (1) (g) by making the municipal requirements equivalent to the corporate, and clarified what the process is for a duly authorized representative.

#### 2. Revision to the Threshold for a Request for Public Information Hearing.

**Comment** - The department changed the criteria for when a public information hearing is required that's inconsistent with s. 283.49 (1) (b), Stats. An unnecessary change was made by including language for a petition from "a small group", and then the term is undefined.

**Response** - The department agrees and revised s. NR 203.05 (1) and (2) to correct the language.

#### 3. Statutes Interpreted.

**Comment** - In the citation of statutes interpreted in the board order, ss. 285.61 and 285.62, Stats. were identified. This statute relates to air permits so it's unclear why they're listed in the citation.

**Response** - The reference to the statutes related to air permits was a mistake and will be corrected.

### Wisconsin Electric Power Company:

#### 1. Clarification of Language in s. NR 203.135 (5) (b).

**Comment** - Use of the adjective "unmodified" has the potential to create confusion about the permit, and suggest it be replaced with "existing". Use of existing would also be consistent with the other uses of existing in this paragraph.

**Response** - The department agrees with the suggested change.

#### 2. Scope of Proposed Change to s. NR 203.136 (1) (c).

**Comment** - An objection is made to the inclusion of "a decision or stipulation from a contested case hearing" as a reason to reopen a permit for modification. The reason being an administrative law judge does not have the authority to stay or remand a DNR rule in a contested case process.

**Response** - Clarifying language was added to address this comment. The Department concurs that an administrative law judge does not have the authority to change or stay a standard in a rule or statute. The intent of the proposed rule language was to acknowledge that an administrative law judge can

direct a permit modification that complies with promulgated rules or existing statutes. In its comments, We Energies concurs that an administrative law judge has the authority to direct a change to the permit. Consequently, paragraph (c) was revised and a separate paragraph (d) was created to clarify that administrative law judges can direct changes to permit terms and that an order from an administrative law judge (or other judicial entity or a stipulation) can be the basis for modifying a permit. If the permittee believes an administrative law judge has exceeded statutory or regulatory authority in its decision directing a permit modification, the permittee can challenge the administrative judge's decision through judicial review.

3. Change in Description of Authorized WPDES Signatory in s. NR 205.07 (1) (g) 2.

**Comment** - The duly authorized representative who may be delegated authority must have overall operational authority for the facility or overall responsibility for environmental matters for the company. Because environmental matters may be the responsibility of several individuals, specific reference should be made to WPDES instead of the more generic use of environmental matters.

**Response** - The Department agrees with the suggested change.